

REMARKS/ARGUMENTS

This Amendment is in response to the Official Action mailed March 10, 2005. Claims 1-20 have been canceled. Claims 21-40 are new. Thus, claims 21-40 are currently pending.

As per a telephone discussion with the Examiner on August 9, 2005, in which the Examiner refused to grant an interview with Applicant's agent, the present amendment is being submitted in conjunction with a Request for Continued Examination. Although it is believed that the present amendment overcomes the rejections set forth in the final Official Action of March 10, 2005, should the Examiner disagree it is respectfully requested that a telephone interview be conducted with regard to same.

In the Official Action, the Examiner has once again rejected claims 6, 7, 9-15 and 17-20 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,779,715 to Pazdernick ("Pazdernick") and claim 16 under 35 U.S.C. §103(a) as being unpatentable over Pazdernik in view of U.S. Patent No. 5,915,523 to Spatafora ("Spatafora"). Arguments submitted with Applicant's amendment of December 3, 2004 have been deemed unpersuasive. However, Applicant hereby submits that newly presented claims 21-40 are patentable over Pazdernick, as will be discussed further below.

In rejecting the arguments previously presented by Applicant, the Examiner cites Figures 1 and 3 of Pazdernik as teaching a different spacing between units from an incoming track throughout their flow through the lane divider. In other words, it is the Examiner's opinion that Pazdernik teaches accelerating the units through the lane divider so as to create a spacing between the individual units. As an initial matter, it is pointed out that Figure 1 of Pazdernik does not show any units on the incoming feeder track, and therefore, it is assumed that Examiner meant to cite Figure 2 of Pazdernik to support her contention. Additionally, it is noted that the spacing shown in Figure 3 of Pazdernik is caused inadvertently by the higher speed of belt means 34 and 36 of the lane divider. There is no discussion relating to this inadvertent spacing, and no mention of the invention of Pazdernik including any means for directly causing or controlling this spacing. Thus, the spacing of the units being transported by the lane divider of Pazdernik, is merely inadvertent and not meant to enable a controlled shifting.

New independent claims 21 and 33 each include a control device limitation. As stated in each of the independent claims, this control device is "capable of controlling speeds of

each said unit and of determining proper shifting of said shifting device." Thus, "[t]he invention enables a control procedure at a very high average flow rate or speed." Paragraph [0026] of the present application. In addition, "[t]he invention can be utilized for grouping a flow of units within a process, that is directing the individual unit into a formation or group suitable for a certain subsequent treatment, e.g. packaging. The invention is also suitable for sorting a flow of units, i.e. guiding the individual units into different paths of an outgoing track, depending on what type of unit is passing the shifting unit (e.g. a unit of a first material to a first path, a unit of a second material to a second path, etc.). The invention is also suitable for distributing units from e.g. one incoming flow into several outgoing flows." Paragraph [0033] of the present application. Pazdernik does not teach or suggest a control device for achieving the above, but rather teaches a shifting device that operates at a higher speed than that of the incoming feeder track, thereby inadvertently causing spacing of units.

Therefore, it is respectfully submitted that new independent claims 21 and 33 are not anticipated and it is respectfully requested that such be moved into condition for allowance. As claims 22-32 properly depend from independent claim 21, and dependent claims 34-40 properly depend from independent claim 33, it is also requested that these dependent claims be allowed. Accordingly allowance of claims 21-40 is respectfully requested.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone applicant's agent at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: August 10, 2005

Respectfully submitted,

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